Gun control : notes on the draft regulations

Background Paper

BP-296E

GUN CONTROL:
NOTES ON THE DRAFT REGULATIONS

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April 1992

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Available in Canada through
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Canada Communication Group -- Publishing
Ottawa, Canada K1A OS9

Catalogue No. YM32-2/296E
ISBN 0-660-14587-1

CE DOCUMENT EST AUSSI PUBLIÉ EN FRANÇAIS

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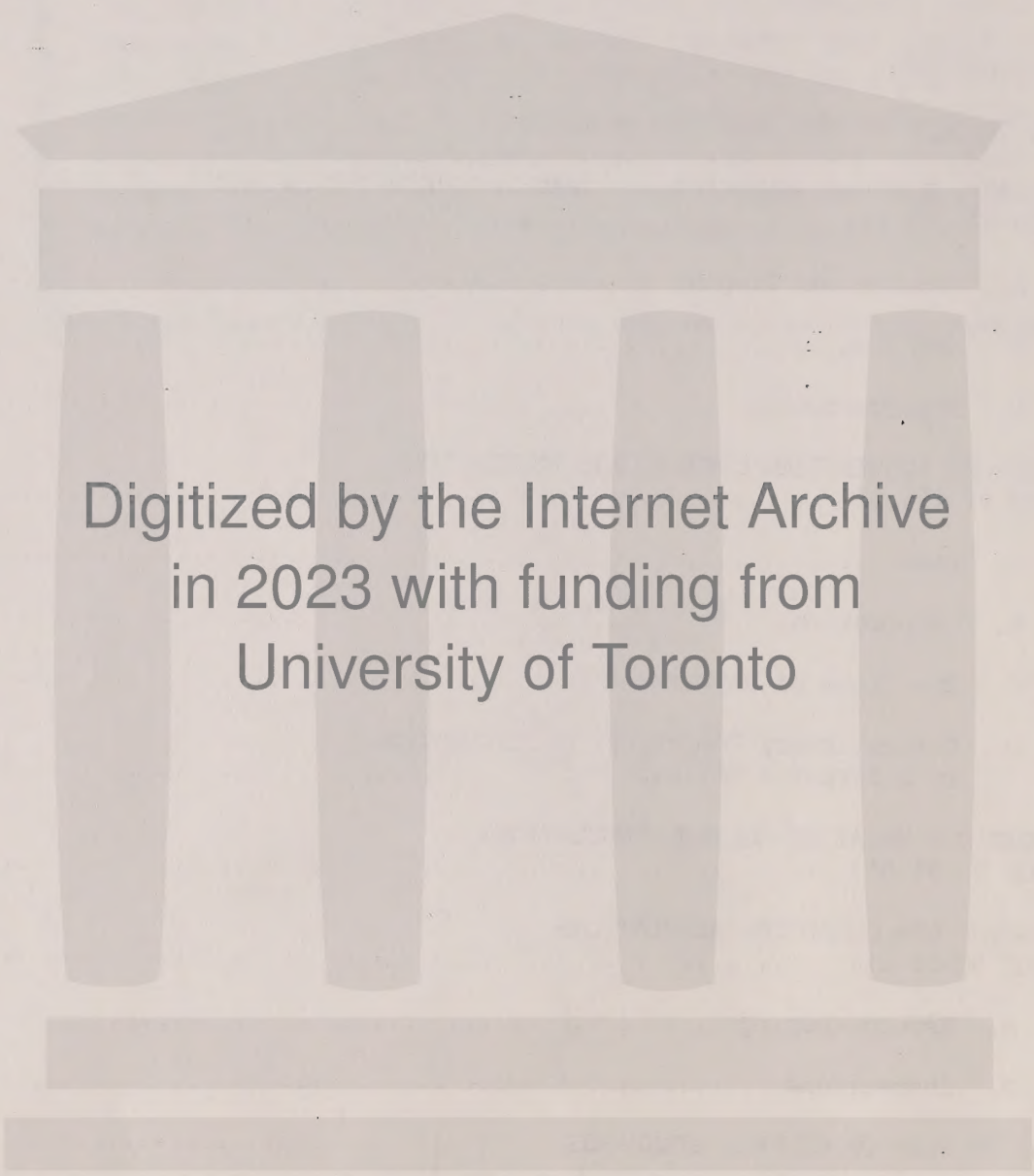

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GUN CONTROL: NOTES ON THE DRAFT REGULATIONS

INTRODUCTION

The firearms control legislation introduced by Justice Minister Kim Campbell as Bill C-17, which received Royal Assent on 5 December 1991, involved new or significantly expanded regulation-making powers. The details of many key features of the legislation were thus left to be determined by regulations proposed by the Minister of Justice and ultimately enacted by the cabinet. Several draft regulations were tabled in Parliament by the Minister on Tuesday, 31 March 1992.

The tabling of these regulations was a result of a compromise addition to Bill C-17. Because of the extent of the new regulatory powers, the bill(1) contained a relatively rare provision for parliamentary scrutiny of regulations made pursuant to the firearms control sections of the *Criminal Code*, with the exception of order in council additions to the prohibited and restricted weapons lists. Clause 28(4) of the bill, which will be section 116(2) of the *Criminal Code* when it is proclaimed in force, requires that a draft of all regulations to be made pursuant to section 116(1), the enabling power, must be laid by the Minister of Justice before each House of Parliament.

The draft regulations must be tabled in Parliament "at least thirty sitting days" before they can be made by the cabinet. "Sitting day" is defined, however, as being a day on which each House of Parliament sits.

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(1) Now S.C. 1991, c. 40. As of 6 April 1992, however, no part of the statute had been proclaimed in force.

THE PROCESS OF PARLIAMENTARY SCRUTINY

Section 116(2) provides that "every appropriate committee as determined by the rules of each House of Parliament may conduct enquiries or public hearings with respect to the proposed regulation and report its findings to the appropriate House." Though this empowers the appropriate committees of each House to hold hearings, it does not require any committee to do so.

Each Member of Parliament and Senator can, of course, examine the draft regulations and make representations directly to the Minister of Justice; however, the most effective form of parliamentary scrutiny would be an examination by committees of each House. The government need not be bound by any recommendations made by committees, but it would presumably not wish to ignore them. The cabinet retains the authority, after the process of parliamentary scrutiny is complete, to make the regulations it deems appropriate, but, given the controversial nature of the legislation that has given rise to them, it will presumably take seriously any recommendations for changes or additions.

Pursuant to Standing Order 32(5) of the House of Commons, the draft regulations have been permanently referred to the "appropriate standing committee," the Justice and Solicitor General Committee. This is the only House of Commons standing committee which has a general mandate under Standing Order 108(2) to review and report on regulations relating to the Department of Justice. The Justice Committee has decided to hold an enquiry on the draft regulations, so the intent of the scrutiny provision will be fulfilled.

STORAGE, DISPLAY, HANDLING AND TRANSPORTATION REGULATIONS (SOR 92-193-01)

One of the primary recommendations of the Special Committee on Bill C-80, the predecessor to Bill C-17, was that comprehensive safe storage regulations should be developed and put in place. The enabling powers of section 116 of the Code formerly did provide for the establishment of some secure storage regulations, but besides dealers, shippers,

museum operators, etc., these powers extended to only one class of private owners - "genuine gun collectors" of restricted weapons. Bill C-17 expanded this power to cover the "storage, display, handling and transportation" of any firearm, including all unrestricted as well as all restricted firearms.

A. Storage and Display

The draft regulations tabled by the Minister would apply to all private owners of firearms; dealers, museums, etc. would continue to be dealt with separately. The basic requirement for "non-restricted" firearms - all rifles and shotguns with the exception of a few restricted long guns - would be that they be stored or displayed unloaded, and either rendered inoperable by a locking device or kept in a locked container, receptacle or room. The requirement that the gun be unloaded would apply to all other firearms as well, and is an obvious safety rule.

The other basic requirement could simply come down to trigger locks on all firearms. Trigger locks are relatively inexpensive, available, and easy to use, and would qualify as "secure locking devices." Owners who were simply complying with the regulations would presumably find the purchase of trigger locks the least onerous way of doing so. Some owners with valuable rifles or shotguns, or a large number of such firearms, might choose to keep them in a locked container or room to preserve them from theft or misuse.

An exception to the rule that non-restricted firearms be made less accessible, either by a locking device or by being stored in a locked container or room, would allow farmers and ranchers to have them readily available for predator control. The farmer or rancher would have to be in an area where federal, provincial, and municipal laws allowed guns to be discharged, and the exception would apply only where the firearm was being stored for predator control on a "temporary" basis. The meaning of "temporarily stored" would have to be defined by experience, and possibly by case law. It would probably mean that the firearm could be readily available for use only where there was reasonable evidence that a predator threat was imminent.

An additional requirement specifies that the firearm would have to be stored separately from the ammunition. This would be subject to an exception, however, where the ammunition was stored in a locked container or room. Since the firearm or firearms would presumably in most cases be stored in the same locked container or room, and need not have trigger locks or other secure locking devices, it is difficult to see the rationale for this exception; if illicit access were gained to firearms and ammunition stored in the same locked container, the firearm would be instantly useable. One would have thought it more sensible to provide simply that firearms would always have to be stored separately from the ammunition. The exception would not apply if the non-restricted firearm was being "displayed." In that case, the ammunition could not be displayed with, or readily accessible to, the displayed firearm.

The requirements applicable to restricted firearms - all handguns and a few long guns - would be more rigorous. Such firearms would have always to be kept unloaded and rendered inoperable by a secure locking device until the owner was ready to use them in a location where discharging them was legal. They would have to be stored in a locked container or room, and be separate from the ammunition. Again, however, an exception would apply where the ammunition was stored in a locked container. The implication here may be that the ammunition should be in a separate locked container, but the draft regulations do not make this clear. If restricted firearms were "displayed," they would have to be securely attached to a structure from which they could not be forcibly removed. The regulations do not make it clear that the "structure" would also have to be something that could not itself be forcibly removed.

B. Handling

Only one requirement would apply to the "handling," as distinct from the storage or display, of firearms. The owners of both non-restricted and restricted firearms would have to wait until they were in a location where their guns could be legally discharged before they could load them.

C. Transportation

There would also be restrictions on how firearms could be transported. Non-restricted guns would have to be unloaded, and the vehicle in which they were transported would generally have to be attended by someone who was at least 18 years of age or the holder of a minor's firearms permit. If the vehicle was unattended, the firearm must not be visible from outside and the vehicle, or at least the part of the vehicle in which the firearm was kept, would have to be securely locked. For vehicles with lockable trunks, it should be relatively easy to comply with these rules. The rules do, however, mean that rifles and shotguns could not be transported in trucks on visible gun racks, even if the racks were locked, unless the truck was always attended by an adult. Trucks and other vehicles without lockable trunks separate from the main vehicle compartment might also have to be equipped with a lockable container secured to the vehicle.

Restricted firearms could be transported only unloaded and in a locked case or in a container that could not readily be broken or opened accidentally. This alternative requirement is somewhat curious. It is not clear why a container that simply could not be "readily broken" should be an acceptable alternative to a locked case. The draft regulations also do not make it clear whether the locked case or other container would have to be secured to the vehicle to ensure that it could not be readily removed.

One apparent gap in both the handling and transportation sections of the regulations is lack of any provision for the carrying of firearms by police officers, armoured car guards, and others who are authorized to use firearms in the course of their duties. For example, police officers carry firearms on their persons and in their vehicles. These guns are and must be loaded all or most of the time while officers are on duty, regardless of any applicable laws, particularly municipal bylaws, that might prohibit their discharge. Officers may carry in their vehicles loaded and visible restricted firearms, and the vehicles are often necessarily unattended, in apparent violation of the transportation requirements.

As well, a few private persons are allowed to carry restricted weapons for self-protection in urban areas. Although certificates for this purpose are rarely issued, these guns are presumably loaded. Special exemptions or particular provisions would appear to be necessary to deal with all of these situations.

FIREARMS ACQUISITION CERTIFICATE REGULATIONS (SOR 92-174-01)

Bill C-17 also added a number of additional requirements to the screening process for a firearms acquisition certificate ("FAC"), which must be obtained before any kind of firearm can be acquired. The bill took the prescribed fee out of the *Criminal Code* itself, and made it subject to being set by regulation; provided for certain corporations prescribed by regulation to be eligible to hold FACs; added a requirement that FAC applicants provide two "references" from a prescribed class; and authorized firearms officers, in circumstances prescribed by regulations and meeting criteria of competence set out in the regulations, to deem applicants to have satisfied the competency requirement without completing the course or test that would otherwise be required.

A. Fees

As previously indicated by the Minister, the fee for individuals would initially be $50 (it was originally set at $10 in the *Criminal Code* in 1977). Corporations would be required to pay a fee of $200.

B. Corporations

Armoured car and similar corporations, film, television and theatrical companies, and companies that develop or test firearms would be eligible to hold FACs as corporate entities.

C. The Class of References

The referees whose names must accompany all FAC applications (after the provision is proclaimed) would have to be people who had known the applicant for at least three years and who could confirm that the information supplied by the applicant was true (presumably to the best of their knowledge and belief). The referees would also have to come from the prescribed class of eligible persons.

The prescribed list would be similar to the eligible list for passport references. It would include: ministers; bank officers; judges and lawyers; police officers; Senators, Members of Parliament, and members of provincial legislatures; municipal elected officials; teachers, principals and professors; and a list of other professions, including accountants, nurses, doctors, veterinarians, social workers and dentists. To ensure that references were available in aboriginal communities, the list would also include chiefs, band councillors, and tribal elders.

While the persons occupying these positions or professions are the sort of respected community members who should have the credibility necessary to add an element of community weight to the FAC screening process, there has always been some question as to whether such people will necessarily have the personal knowledge of the applicants to enable them to vouch for the information required. This information would include such matters as whether the applicant had been treated for a mental disorder involving violence or the potential for violence. On the other hand, the family members and close personal friends who might actually have such knowledge would presumably not be considered a source of unbiased community endorsation. The persons on the prescribed list would presumably at least have to be in a position to verify that the applicant did not have a reputation in the community for violence (although that is not exactly what the legislation asks them to do).

In order to broaden the nature of the class, the regulations also provide that a reference might be "any employer or fellow-employee of the applicant." This would add a different kind of reference, perhaps one more personal to the applicant, and should make it easier for applicants to find a suitable referee among their immediate acquaintances and thus comply

with the requirement. It might be suggested, however, that it might broaden the class too much to allow applicants to use any two co-workers in all cases. The initial reaction of some firearms control advocates has been that only one of the two required references should be a fellow-employee.

D. Discretionary Competency Certification by a Firearms Officer

The safety and competency requirement presumably to be proclaimed at some point in the future will require that all FAC applicants successfully complete an approved course or test. The discretionary authority offered as an alternative by Bill C-17 would apparently be used only to offer an exemption for those who had owned and used firearms for a significant period of time before the new requirement came into effect and could demonstrate competence, without a course or formal test. Such persons may have owned firearms before 1978, and thus never have required an FAC, or may have held a FAC that has since expired. They would nonetheless require an FAC if they were to acquire additional firearms now. The required period of prior firearm ownership for access to alternative certification would be at least five years.

The firearms officer would have be satisfied that the applicant had sufficient knowledge of the basic principles of safe handling and use of firearms, the basic operation of common sporting guns, and the federal and provincial laws that regulate the use of firearms for hunting and sporting purposes (on the federal level, this would include the relevant provisions of the *Criminal Code* and the new regulations). The draft regulations give no indication as to how the firearms officers would have to satisfy themselves that these criteria had been met. It is possible that an officer could certify an applicant without much of an oral examination, or with no oral examination at all, if the person was well-known in the community for his or her expertise in firearms. Some effort would, however, presumably have to be made to verify that the person was aware of the new controls and restrictions imposed by Bill C-17 and the regulations, and any new provincial regulations.

CARTRIDGE MAGAZINE CONTROL REGULATIONS (SOR 92-56-01)

One of the more important parts of the Minister's gun control package, and one that depended entirely on regulations for implementation, was the proposal to limit the size of cartridge magazines. Bill C-17 provided the enabling power for such regulations, but imposed no limits itself. Cartridge magazines over the prescribed limits will become prohibited weapons and, with one exemption set out in Bill C-17 for competitive shooters, no one will be able to possess or acquire them. This element of the package was one of the most controversial features of the legislation, and was hotly contested by most witnesses from the firearms community.

The draft regulations have held to the limits initially proposed by the Minister of Justice - 10 cartridges for handguns and five for long guns (except where the magazine fitted both handguns and long guns). The limits would apply, however, only to semi-automatic firearms and there would be some significant exemptions.

In regard to handguns, the limits would apply to magazines "designed or manufactured for use" in such firearms. The regulations state that where the magazine was also designed or manufactured for use in a long gun (although this presumably means would also "fit" a long gun), the limit of 10 cartridges would still apply if the relevant handgun was commonly available in Canada. In other words, if the magazine fitted a handgun that was commonly available, it might also be used on any long gun which it also fitted. Where the magazine fitted both a handgun and a long gun, but the handgun was not commonly available in Canada, the limit applicable to long guns, five cartridges, would apply.

In regard to long guns, the limit of five cartridges would apply to both semi-automatic and fully-automatic firearms. Fully-automatic guns were prohibited in 1978, but approximately 10,000 of them were grand-fathered at that time. Converted automatics, which will be prohibited when Bill C-17 is proclaimed, also fall within this class. This provision would affect the "genuine gun collectors" who have been allowed to retain firearms capable of fully-automatic fire, and those who will be allowed to

retain converted automatics. It would thus apparently prohibit individual collectors from possessing magazines designed for historical fully-automatic military firearms and which had a capacity of more than five cartridges, unless the magazines could be modified. Approved museums are generally allowed to possess prohibited weapons, and thus would not be affected.

Only magazines for centrefire semi-automatic long guns would be covered, as the prohibition would not apply to magazines designed or manufactured for use in rimfire rifles, whether originally designed as rimfire weapons or re-chambered for this use. Rimfire rifles are low-calibre, low-velocity firearms such as the standard .22 calibre. Magazines designed for the common historical military rifle known as the "Lee Enfield" would also be allowed to have a capacity of 10 cartridges, the size of the standard Lee Enfield magazine.

Magazines might also be altered or re-manufactured to bring them within the allowable capacity. Such modified magazines would escape the prohibition applicable to their original capacity as long as the modification could not be "easily removed" and the magazines could not be "easily further altered" to increase the capacity beyond the prescribed limits.

Bill C-17 provided an exemption for those authorized by the local registrar to possess over-capacity magazines for use in firearms for shooting competitions approved by the Attorney-General. This does not, as some members of the Canadian Advisory Council on Firearms seem to have inferred, mean that the over-capacity magazines can be used only in the competitions themselves, and not in practising for such competitions. This would only be the case if the local registrar applied such a condition to the authorization. The provision does not even clearly require that the authorized owner be a person actually engaged in competitive shooting, simply that the magazine must be used on a firearm that is "suitable for use" in an approved competition. Thus, at the discretion of the local registrar, authorization for possession could be given to those who could demonstrated that they were involved with a competitive shooting organization, and were working toward being eligible and competent to shoot in an

approved competition. It remains to be seen, however, whether the exemption will be interpreted and applied in this fashion.

The exemption would be made subject to conditions prescribed by regulation, but the draft regulations provide only that the authorized owner would have to store the magazine in accordance with the requirements, pursuant to the regulations for storage, handling and transportation for the relevant firearm.

GENUINE GUN COLLECTOR REGULATIONS (SOR 92-55-01)

One class of persons allowed to acquire restricted weapons has for many years consisted of "genuine gun collectors." The *Criminal Code* contained no definition of this term, however, and the addition of such a definition was a primary recommendation of the Special Committee on Bill C-80, and a significant feature of Bill C-17.

The definition provides that a collector would have to possess or seek to acquire one or more restricted firearms related by historical, technological or scientific characteristics, and would have to consent to periodic inspections of the premises in which the restricted weapons were kept. (Presumably if the collector possessed or wished to acquire only one such firearm, there should also be an intention to acquire others.) It was expected that regulations would spell out how the inspections would be conducted, further requirements as to record-keeping and secure storage, and any other matters relevant to the knowledge of the collection that the owner would be expected to have.

The draft regulations deal only with record-keeping and the procedure for periodic inspections. Collectors of restricted weapons would be subject to the storage and display regulations applicable to all owners of restricted firearms; requirements regarding the knowledge component in the definition of genuine gun collector may or may not be prescribed at some point in the future.

A. Record-Keeping

The record-keeping requirements would be the most extensive of the controls imposed, but they would require only that the collector kept records of all restricted weapons in the collection, where they were kept, the manner in which they were transported, and any change in their status. A collector would have to keep available a copy of each restricted weapon registration certificate, and would have to record: the date of acquisition and the name and address of the person from whom the weapons were acquired, as well as a description of the make, model, calibre, serial number, and any unusual or unique characteristics of the weapons. A collector would have to keep with these records any additional documentation required, such as temporary storage permits. The *Criminal Code* already requires collectors to report any loss or theft of a restricted firearm, and the draft regulations would require them to keep documentation as proof that a report had been made.

Information would also be required to be kept on any sale or transfer of a restricted weapon that was part of a collection, including the name and address of the person to whom it had been transferred. If such a weapon ceased to be part of a collection, but was retained by the collector for other authorized purposes, the collector would have to have a valid registration certificate for that purpose.

The records would have to be kept for at least one year after any restricted weapon in a collection was transferred, destroyed or rendered permanently inoperable, or after the collector was no longer entitled to hold any restricted weapon registration certificate (presumably because of a general prohibition order).

Copies of the records would be required to be kept both at the place where that collector was authorized to store or display the restricted weapon, and at his or her home or place of business. Where the firearm was being transferred to a new authorized location, or to another location pursuant to a temporary storage permit, the record would have to travel with it. The gun collection records would have to be stored separately from the collector's other personal or business records.

There is no provision for the enforcement of these requirements. The collector would not be expressly required to demonstrate

periodically to the local registrar or firearms officer that the records were being kept in accordance with the regulations, although an examination could presumably be demanded where an officer had reasonable grounds to believe that there was non-compliance.

In particular, there is no express provision that the records would have to be shown to an officer conducting an inspection, in accordance with the regulations, of the premises in which the restricted weapons were being kept. This is, however, perhaps implied in the draft regulations, insofar as the inspection might include that portion of the collector's premises in which the records were kept. Collectors could certainly be required to show that they were in compliance with the record-keeping provisions if they applied for a new restricted weapons registration certificate as a collector; at that time, they would have to be able to show that they fell within the definition of the "genuine gun collector."

B. Inspections

The collector's premises might be inspected by a police officer, local registrar of firearms, or any firearms officer (these are normally local police officers, but may also be civilians) between the hours of 7:00 a.m. and 9:00 p.m., local time, or at any other time agreed to by the collector. The officer would have to give "reasonable notice" to the collector that an inspection would be carried out, and the inspection would be restricted to those portions of the collector's premises in which the restricted weapons, or the records pertaining to them, were kept.

The draft regulations say nothing about the authorized purpose of the inspection, although, since inspection would be restricted to the areas where the weapons and records were kept, it would presumably be to verify compliance with the applicable secure storage and record-keeping requirements. The draft regulations also say nothing about how often such an inspection could be carried out. An inspection might be appropriate at any time the officer reasonably suspected that a requirement of the *Criminal Code* or the regulations was being breached. Limits on the time and resources of police and firearms officers would no doubt ensure

that inspections were not carried out too frequently; however, some limit on how often a routine inspection could be carried out might at least reassure collectors that they would not face such inspections unreasonably often.

THE PROBLEM OF GENERAL STANDARDS

Many of the proposed standards to which firearms owners would have to adhere, or risk prosecution for a criminal offence, are indefinite and subjective in nature. For example, storage requirements specify either a locking device or a locked container that is "constructed so that it cannot readily be broken open." The term "readily" in this context could be open to wide interpretation.

Fixed, detailed standards might be unacceptably rigid, and prescribing them in the regulations might not be feasible in any case. General standards are common enough in regulatory regimes, but administrative enforcement often provides a mechanism for applying them without exposing those subject to them to criminal liability. A public official, for example, might be given the power to determine whether the standard had been met, and, if it had not been, to prescribe any necessary changes.

These regulations do not provide for any formal administrative enforcement mechanisms. Enforcement would be by way of criminal prosecutions for lack of compliance with the requirements set out. Firearms owners would not, however, be held absolutely liable for any failure to meet the criteria of the regulations. If the offence was regarded as one that required full criminal intent, owners would be liable only if they had wilfully or recklessly failed to comply. If the offence was held to be a strict liability "regulatory" matter, the onus would shift to the accused person, if lack of compliance was found, but the person would still have a defence. Once the court had determined that the prescribed standard had not been met, the accused would be able to defend by showing that he or she had exercised "due diligence." To establish this defence, the person would simply have to show that, in the circumstances, reasonable efforts had been made in attempting to meet the standard.

Those who attempted in good faith to abide by the regulations should thus be protected from criminal conviction. Until, however, the courts have developed guidelines in the course of hearing charges based on the regulations, both police officers and firearms officers will have to engage in a significant amount of subjective interpretation of whether prescribed standards have been met. Grey areas will perhaps inevitably arise; some owners who might reasonably believe that they had complied with the regulations might nonetheless face charges, with all the attendant embarrassment and expense, if not ultimate criminal conviction.

Gun owners could no doubt seek the advice of police and firearms officers in most doubtful cases, without having to fear prosecution, and would presumably have a good defence of due diligence if a prosecution were ever to be launched. Some effort might be made, however, to develop and publicize guidelines that would help firearms owners comply with the regulations, and police officers to interpret and apply them.

OTHER DRAFT REGULATIONS - PROHIBITED WEAPONS CONTROL REGULATIONS (SOR 92-161-01) AND RESTRICTED WEAPONS AND FIREARMS CONTROL REGULATIONS (SOR 92-194-01)

The remaining draft regulations tabled by the Minister on 31 March 1992 would not affect recreational owners and users of firearms. The first set deals with the requirements for those manufacturing and exporting prohibited weapons pursuant to Bill C-6 (passed in 1991, before Bill C-17), which amended the *Export and Import Permits Act* and the *Criminal Code* for this purpose, and those whom Bill C-17 would permit to possess prohibited weapons for approved industrial purposes. These approved industrial purposes include supplying fully-automatic firearms to film companies and other entertainment enterprises and the business of developing and testing firearms and ammunition. The provisions would also apply to those involved in the transportation of prohibited weapons for these purposes.

The additional regulations applicable to restricted and non-restricted firearms would apply to dealers. They refer to such matters

as defining inventories, the keeping of personal firearms separate from weapons held as part of a business inventory, and storage of firearms held as part of the business.

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